IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO.No.862 of 1995

DATE OF ORDER:

Anil Kumar Aggarwal

...Petitioner(s)

Versus

Gurdev Singh

....Respondent(s)

CORUM : HON'BLE MR. JUSTICE M.M. AGGARWAL

.*.*.*.

Present: Mr. Madan Pal, Advocate.

Mr. Raghubir Tejpal, Advocate.

M.M. AGGARWAL,J

This is an appeal filed by the claimant against award dated 7.9.1994 passed by Motor Accident Claims Tribunal, Kurukshetra whereby the claim petition filed by present appellant was dismissed holding that it was not proved that the accident took place due to rash and negligent driving of the motor vehicle by respondent Gurdev Singh.

According to the claimant, on 20.9.1991 at about 9.00 PM, a three wheeler tempo bearing No.HRE 3122 had gone out of order and driver Lal Chand had called him. This three-wheeler was standing on Pipli-Kurukshetra road on its left hand side. The mechanic had just left the place

after repairing the three-wheeler and Lal Chand driver had gone to fetch water to put into three-wheeler. Then the petitioner was sitting inside the three-wheeler when Ambassador Car bearing No.HR-07/1654 driven by Gurdev Singh came in a rash and negligent from Mohan-Nagar Chowk side. The left hand side of the car hit the three-wheeler with such a force that the petitioner, who was sitting inside the three-wheeler, fell out of the same on the road on right hand side of the tempo. The leg of the petitioner was run over by the car and this accident was witnessed by Lal Chand and one Shiv Kumar and they tried to pursue the car in the tempo but car driver was successful in running away. Case was registered at the instance of Lal Chand. Claimant had received injuries due to rash and negligent driving of the car by the respondent.

According to the respondent, he was in fact driving Car HR 07/1654 on 20.9.1991 and was coming from Bhain Sahib (Ludhiana) after attending the marriage of his brother. At about 7.00 PM, a truck bearing No.HNA 571 was going ahead of him. He had tried to overtake the truck. Truck applied brakes all of sudden and his car barged into that Truck on its right hind side and the left side of his car came in contact with the right side of the truck. The car was badly damaged and that accident took place due to sudden application of major brakes by the truck driver. Compromise was arrived between him and the owner/driver of the truck. Respondent was paid money by the truck owner. It was denied that any such occurrence as alleged by the claimant had taken place.

The occurrence as alleged by the claimant of this case had taken place at about 9.00 PM whereas FIR had been registered on the statement made by Lal

Chand at about 11.30 PM on the same evening i.e 20.9.1991. Details of the occurrence were given. Number of the vehicle and name of the driver had been given. Only Anil Kumar had appeared as PW1 and stated that car had struck from behind in the Auto and he was thrown out of the Auto on the right hand side and car had run over his legs. PW4 Shiv Kumar mentioned as witness in the FIR had also stated in the same terms wheras on behalf of the respondent, FIR had been proved by PW5 Daryao Singh Inspector CID.

Gurdev Singh appearing as RW1 and Baldev Singh RW2 owner and driver of Truck bearing HNA 571 had deposed about the occurrence as narrated by Gurdev Singh having taken place with the Truck and that then compromise effected.

On behalf of the respondent, it was argued that Gurdev Singh respondent had since been acquitted in the criminal case registered. It was argued that if there had been serious injuries on the person of claimant at the spot then there would have been blood but there was no blood at the spot. From the photographs, it was pointed out that there was no serious damage to three-wheeler. It was further argued that the right side of back compartment of the three-wheeler has always iron rod on the right hand side and as such, claimant could not fall from that side if car had struck from behind in the three-wheeler as alleged. Therefore MACT had rightly come to the conclusion that the accident as alleged was not proved.

Here is a case in which statement was made by Lal Chand before the police immediately after the occurrence and FIR was registered. Number of vehicle and name of the driver had been clearly mentioned.

It is admitted position that the car in question was not insured. When front side of the car had definitely some damage, then possibility of

the car owner showing a different incident with the Truck and having entered into compromise with the truck to avoid liability to pay compensation to the present claimant cannot be ruled out. There would be no cause for Lal Chand or Anil Kumar to falsely involved the present car and its owner-driver.

In the case before the Criminal Court, prosecution case has to be proved beyond doubt whereas before MACT, the probabilities are to be looked into. If false story was to be made then claimant could always involve some vehicle of a friend having insurance. There would be no cause for the claimant to involve the present car and its driver.

When an accident takes place and a vehicle strikes into another vehicle from behind then one can not later on ascertain or explain with full certainity as to what could happen or what should have happened. Therefore if there had been no serious damage to the three-wheeler, still it cannot be said that by impact of striking from behind, the claimant could not fall on the road and then have injuries by running over of the car.

The claimant's case is supported by the claimant-injured himself and Shiv Kumar PW and the factum of FIR recorded promptly whereas respondent version appears to be an after thought. Even claim petition had been filed promptly on 9.10.1991. Finding of the MACT that accident did not take place due to rash and negligent of the car by the respondent are, therefore, reversed.

MACT had awarded Rs.26,000/- on account of medicines for which bills etc had been produced, Rs.48,000/- for loss of earning capacity. Since disability was 50 % and petitioner was young man of 30 years, Rs.30,000/- had been awarded for physical pain and suffering and from

deprivation of enjoyment of life. In all, Rs.1,04,000/- had been awarded as compensation.

In the facts and circumstances of the case, Rs.1,04,000/- would have been just and fair compensation for the injuries received by the claimant-appellant.

This appeal is allowed. Rs.1,04,000/- is awarded as compensation. However, no interest is awarded since occurrence took place more than 16 years back and aforesaid vehicle was Ambassador car and was not insured and it will be big hardship for the respondent to pay heavy compensation at this stage.

November 16, 2006 (M.M. AGGARWAL)
manoj JUDGE